IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1680 OF 2007

IN

WRIT PETITION NO. 6824 OF 2005.

The Asstt. Provident Fund Commissioner .... Applicant

Vs.

Maharashtra State Co-op. Bank Ltd. & Ors. .... Respondent

Mr. Suresh Kumar for Applicant.

Mr. Y.R. Naik,Senior Counsel a/w Mr. Prashant Naik for Respondent no. 1

Mr. R.G. Ketkar a/w R.M. Pethe for Respondent no.2.

WITH
CIVIL APPLICATION NO. 1681 OF 2007
IN
WRIT PETITION NO. 6824 OF 2005

The Kannad Sahakari Sakhar Karkhana Ltd. .... Applicant

Vs.

The Asstt. Provident Fund Commissioner & Recovery Officer .... Respondents

Mr. R.G. Ketkar a/w Mr. R.M. Pethe for the Applicant.

Mr. Y.R. Naik, Senior Counsel a/w Mr. Prashant Naik for Respondents.

CORAM : S.B. MHASE AND
R.S. MOHITE, JJ

DATE : 29TH JUNE, 2007

P.C.

1) Heard parties.

2) The Civil Application No. 1680 of 2007 has been filed by the Assistant Provident Fund Commissioner in Writ Petition No. 6824 of 2005. The applicant in this petition is the Respondent no. 1 in the main petition. The Civil Application No. 1681 of 2007 has been filed by Kannad Sahakari Sakhar Karkhana and the said applicant is the Respondent no. 2 in the main petition. The main respondent in both these applications is Maharashtra State Co-operative Bank Limited which is the petitioner in the main petition.

3) The main Petition No. 6824 of 2005 was filed by MSC Bank against the Assistant Provident Fund Commissioner and Kannad Sahakari Sakhar Karkharna, respondent nos. 1 and 2 respectively. The said petition arises in the facts and circumstances that the Assistant Provident Fund Commissioner attached the sugar produced by Respondent no. 2 - Sugar Factory, for recovery of the dues of the provident fund of the employees of the Respondent No. 2 - Sugar Factory. However,

the sugar which was manufactured by the Respondent no. 2 was already placed with the MSC Bank-Petitioner and having found that the sugar is attached by the Provident Fund Commissioner, the MSC Bank filed the Petition No. 6824 of 2005 as against the Assistant Provident Fund Commissioner and the Sugar Factory challenging the attachment effected by the Assistant Provident Fund Commissioner. The Petitions were admitted and during the pendency of these petitions under the orders of this Court, the sugar which was attached by the Assistant Provident Fund Commissioner and which was placed with the MSC Bank, was directed to be sold and the sale proceeds of the sugar were directed to be deposited in this Court. In accordance with the directions of this Court, the attached and placed sugar, as stated earlier, was sold and price of the said sugar amounting to Rs.9,24,08,254/- has been deposited in this Court and, therefore, the applicant in Civil Application No. 1680 of 2007 namely Assistant Provident Fund Commissioner has approached this Court with a prayer that the amount of Rs.7,77,46,511/-/- be transferred to the Assistant Provident Fund Commissioner and for other reliefs.

4) While the litigation was going on, the

Assistant Provident Fund Commissioner, by another order, attached the Bank Accounts and movable and immovable properties of the Sugar Factory and also attached 69,000 Sugar Bags. Therefore, the applicants in Civil Application No. 1681 of 2007 have approached this Court with a prayer that the said attachment effected by the Assistant Provident Fund Commissioner be vacated. It is their case that out of the total amount of Rs.7,77,46,511/-, the amount of Rs.3,56,79,065/- is an amount claimed by the Assistant Provident Fund Commissioner towards the damages and in this respect, the appeal has been already filed by the Sugar Factory before the Appellate authority challenging the orders of the Assistant Provident Fund Commissioner and, therefore, they are disputing the applicant in Civil Application No. 1681 of 2007, namely, the Sugar Factory is disputing the transfer of Rs.3,56,79,065/-. However, the Sugar Factory has no objection to transfer the amount of Rs.4,20,67,446/-. They have further no objection for transferring an amount of Rs.1,46,61,743/- to the MSC Bank.

5) Mr. Naik, learned counsel appearing for the original Petitioner and Respondents in the Civil Applications opposed both the applications.

He submitted that the total amount of Rs.9,24,08,254/- be transferred to the MSC Bank. He submitted that the total sugarcane was placed with the MSC Bank and, therefore, in view of the fact of the special pledge / lien of the MSC Bank is on the attached sugar, other creditors cannot have any preferential right as against the said amount in view of the special pledge or the lien of the Bank. He relied upon the Judgment of the Apex Court in the matter of **The Bank of Bihar vs. The State of Bihar and others in AIR 1971 Supreme Court, 1210**.

6) In order to counter the submissions of Mr. Naik, Mr. Suresh Kumar has relied upon several judgments of this Court. The main reliance placed by Mr. Suresh Kumar was on Section 11(2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

7) Section 11 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 deals with the priority of the payment of contribution of other debts. Sub Section 2, which is relevant for the decision of this Civil Application, reads thus:

"without prejudice to the provisions of

> Sub-section (1), if any amount is due from an employer, whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law, for the time being in force, be paid in priority to all other debts."

Thus, what we find by this provision, is that the contribution which is payable from employee's wages and/or by the employer, if not paid, has been stated to be first charge on the assets of the employer. This has been considered by this Court in the matter of Janata Sahakari Bank Limited vs. Assistant Provident Fund Commissioner and Recovery Officer and Ors. in Writ Petition No. 639 of 2005 and relying upon the Supreme Court Judgment reported in **(1995) 2 Supreme Court Cases 19** in the matter of **State Bank of Bikaner & Jaipur Vs. National Iron & Steel Rolling Corporation and others**, this Court has concluded that the said contribution under Provident Fund Act is having the first charge on the assets of the employer. As against this, the case which has been relied upon by Mr. Naik namely AIR 1971 Supreme Court, 1210 (supra) is not the case dealing with the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952, it deals with the Public Demands Recovery Act where some provision like that

of Section 1(2) of the Provident Fund Act was not under consideration. In that case the attachment was effected by the Commissioner and the finding arrived by the Apex Court was that the Cane Commissioner was an unsecured creditor and, therefore, could not have any higher right than the co-owner and was entitled to money only after the satisfaction of the plaintiff's dues. However, in the present matter, the Provident Fund Commissioner is a secured creditor in view of the statutory provisions and, therefore, we find that there is no merit in the contention raised by Mr. Naik and we reject the said submission.

8) From the submissions of Mr. Ketkar, learned counsel for Sugar Factory, it is revealed that except an amount of Rs.3,56,79,065/- he has no objection to transfer and/or release the rest of the amount in favour of the Assistant Provident Fund Commissioner and the MSC Bank. So far as the amount of Rs.3,56,79,065/- is concerned, he submitted that this amount be kept with the High Court and/or shall be deposited with the Bank and may be returned to the Sugar Factory in case the Sugar Factory succeeds in an appeal filed before the Appellate Tribunal, challenging the order of Assistant Provident Fund Commissioner. Mr. Ketkar

has no objection even to keep this amount by way of investing it in a fixed deposit with the MSC Bank, but the only submission of Mr. Ketkar is that the Bank shall not appropriate the said amount towards the dues of the Sugar Factory. However, he has fairly stated before the Court that in case he succeeds in the appeal before the Appellate Tribunal under the Provident Fund Act and, thereby, becomes entitled for an amount of Rs.3,56,79,065/-, it may be appropriated by the MSC Bank towards the loan. Mr. Ketkar further submitted that in case he loses the appeal, the Bank may be directed to pay the said amount to the Assistant Provident Fund Commissioner.

9) Mr. Naik, on instructions submitted that he has no objection for keeping the amount of Rs.3,56,79,065/- by way of a deposit with the Bank till the decision of the appeal filed by the Karkhana with the Appellate Tribunal under the Provident Fund Act. He stated that the MSC Bank will return this amount and/or pay this amount to the Provident Fund Commissioner in case the Sugar Factory loses the appeal. He further states that said amount will be appropriated towards the dues of the Sugar Factory in case the Sugar Factory’s appeal is allowed.

10) Mr. Ketkar submitted that if the amounts as he has submitted, are transferred to the Assistant Provident Fund Commissioner and the amount of damages is secured by keeping in the Bank, there is no reason for the Assistant Provident Fund Commissioner to continue with the attachment of the movable, immovable and the Bank Accounts and sugar bags of the Factory. In that event, the Assistant Provident Fund Commissioner be directed to vacate the orders of the attachment. Mr. Suresh Kumar, on instructions of the Assistant Provident Fund Commissioner fairly submitted that if the principal amount of Provident Fund contribution is alongwith interest is transferred to the Provident Fund Commissioner and if the amount of damages is secured by keeping in MSC Bank, the Assistant Provident Fund Commissioner shall vacate the orders of attachment as against the assets of the Sugar Factory.

11) Taking into consideration all these facts and circumstances and the concessions given by the respective counsels, which are recorded above, we pass the following order.

O R D E R

(a) Out of the amount of Rs.9,24,08,254/-, the amount of Rs.4,20,67,446/- (Principal amount Rs.1,75,10,477 plus interest Rs.2,45,56,969/-) be paid to the Assistant Provident Fund Commissioner so as to appropriate towards the provident fund dues of the workers of the sugar factory.

(b) Out of the remaining amount, the amount of Rs.1,46,61,743/- shall be paid to the MSC Bank which MSC Bank shall appropriate towards the dues of the Sugar Factory.

(c) The remaining amount of Rs.3,56,79,065/- be deposited initially for a period of 1 year with the MSC Bank in the name of the Registrar General, High Court, Bombay for a period of 1 year. If within the period of 1 year, the appeal filed by the Petitioner with the Appellate Tribunal under the Provident Fund Act is not disposed of, then the Registrar General will re-deposit and or renew the said amount on yearly basis with MSC Bank till final disposal of the said appeal.

(d) The information in respect of the number, pendency or disposal of the Appeal shall be given

by the Sugar Factory to the Registrar General when the said Appeal is disposed of.

(e) In case the said appeal filed by the Sugar factory is dismissed by the Appellate authority, then the amount of Rs.3,56,79,065/- will have to be transferred to the Assistant Provident Fund Commissioner and the Registrar General is hereby directed, accordingly, to transfer it.

(f) In case the appeal is allowed and thereby the sugar factory becomes entitled to the amount of Rs.3,56,79,065, then the MSC Bank is at liberty to appropriate the said amount towards the dues of the Sugar Factory.

(g) In view of the above directions and the disbursement of the amount, the order passed by the Assistant Provident Fund Commissioner attaching the assets, Bank Accounts and sugar bags etc. of the Sugar Factory is hereby quashed and set aside and the Sugar Factory is at liberty to deal with the said assets in accordance with their own Resolution and decisions keeping in mind the directions.

(h) We make it clear that this arrangement and the concessions which we have recorded are subject

to the further rights of the parties to agitate the matters before appropriate courts.

(i) Both the Civil Applications stand disposed of.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**